



CBRA Analysis Pet "Guardian" vs. "Owner"

Elliot Katz, a veterinarian and the founder of the Mill Valley, CA based In Defense of Animals (IDA) has organized a campaign he calls "They are not our property, we are not their owners". IDA advocates for a change in language from Pet Owner to Pet Guardian. It is the ultimate goal of IDA to have this terminology adopted by all U.S. states. In California, this campaign has already succeeded in Berkeley, San Francisco, and West Hollywood. Five other cities recognize animal guardianship: Boulder, CO; Sherwood, AR; Woodstock, NY; Menomonee Falls, WI; and Amherst, MA; as does the state of Rhode Island.

Overview

When implemented, this change typically means that residents who apply for pet licenses are referred to as "guardians" rather than "owners". Other changes include referring to "guardians", not "owners" at animal commission meetings, veterinary offices, and animal shelters.

A change in terminology is more than mere semantics. The concept embodied in the word "guardian" is radically different from that in the word "owner". If one concept replaces the other, eventually the legal impact of guardianship will be felt by those with custody of animals, and animals will be afforded rights now reserved for humans.

In addition, while this change in terminology would most likely do nothing to protect pets from irresponsible owners, changing terms and raising the legal status of animals might expose veterinarians and city workers (such as animal control) to legal actions, such as malpractice or negligence. According to the American Veterinary Medical Law Association (AVMLA), "The claims that could be filed on behalf of animals that are no longer deemed property could include physical and/or mental pain or suffering...loss of being able to breed or sire offspring...[and] false imprisonment by being caged by a veterinarian." In addition, veterinarians could be obligated to ignore the wishes of an owner/guardian if doing so is in the best interest of the pet.

Analysis

The creation of guardianship for pets is not just a backdoor attempt to vest rights and duties in animals. It is an attempt to provide the ability to enforce rights by *outside* parties. In this case the rights of animals, brought by interested parties [animal rights supporters and those opposed to research using animals] against owners of the animals and others who are thrust into the role of "guardian" (private owners, zoos, universities, corporations, breeders, ranchers, circus operators, the USDA, researchers, or veterinarians).

To enact statewide legislation recognizing an animal's right not to be considered property (as pet ownership implies) is the first step that animal activists are taking in order to reach legally recognized status and enforceable rights for animals. By making people the "guardians" not "owners" of animals the basics for such legally recognized status would exist. With a guardianship, significant duties are imposed on the guardian (and person could be construed to include nonhumans, i.e. universities, corporations, and such). What these rights might constitute is not clear, but in human guardianship, the rights are very significant and the guardian must always act with the best interests of the ward in mind, not the greater good. Certainly, what these

rights might and will constitute will be played out in the courts. This could very simply change the status of animals, all animals, from property to persons, legally.

Our current laws about animals are based on the concept that animals have economic value - like other property, they are protected by those laws dealing with property. A person cannot sue on *behalf* of a damaged car, but he or she can sue to recover the economic value of *the* car. Animal activists wish to see animals identified in this legal sense, as “persons” because persons who are not legally competent, e.g. minors, mentally incapacitated, etc., have legal guardians to protest their “interests”. Third parties could easily claim that certain guardians (researchers) are not adequately representing and protecting their wards, and challenge guardianship, on *behalf* of the animal.

The concept of guardianship could quickly become applicable to test animals, commercial livestock, performing and zoo animals, as well as pets. This is one of the main objectives of the Great Ape project and other primate freedom projects.

A possible scenario for the development of legal rights for animals:

1. Owners of selected kinds of animals (cats and dogs) are officially termed “Guardians” by local and state laws recognizing the status of these animals.
2. Owners (now guardians) of these kinds of animals are allowed to sue veterinarians and other who injure these animals for compensations not only for the economic loss, but also for a guardian’s emotional distress.
3. Guardians of these kinds of animals are allowed not only to sue for emotional distress caused by the negligence of others, but also for the tort “loss of companionship” which is currently available only to the relatives and spouses of humans who lose loved ones (Currently, in some states, domestic partners are not even able to sue under this tort).
4. These selected animals are given legal standing to sue veterinarians and others in their own right. This involves the appointment of courts of guardians ad litem who represent these animals. Animals that win such lawsuits are awarded monetary damages for their disability, pain, and suffering just as human children do who are injured by physician malpractice.
5. The benefits of stages one through four are extended to other animals, including horses, primates, and livestock.
6. Lawsuits are brought or legislation is introduced to change selected or all animals from the legal status of property to that of persons.
7. These new “persons” then sue for emancipation from their guardians (or owners) or possessors, which could include farmers, zoos, biomedical researchers, and medical instructors.
8. All human use of animals is termed exploitative and legally prohibited. Prohibited uses would include use of animals and animal products for human or animal consumption, livestock and poultry production, hunting, trapping, fishing, fur-farming, use of animals in product-safety testing, use of animals & animal products in clothing and domestic products, using animals for any medical or veterinary research, all performing animals and animals in zoos, circuses, rodeos, horseshows, & dog shows, guide dogs for the blind, police dogs and horses, DEA drug search dogs, search & rescue dogs, and military bomb-search dogs, dolphins, and other military animals.

The final conclusion of number 8 is not over-exaggerated. These are the current stated goals of organizations such as PeTA and other well-known animal rights organizations.

TO SUPPORT THE ADVANCEMENT OF HUMAN AND ANIMAL HEALTH BY PROMOTING AND PROTECTING BIOMEDICAL RESEARCH AND TEACHING.